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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/519,824 03/06/00 GASCOIGNE

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028020 IM52/0521
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EXAMINER

PADEN, C

ART UNIT

PAPER NUMBER

7

1761

DATE MAILED:

05/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

0093760-4286756

Office Action Summary	Application No.	Applicant(s)	
	09/519,824	GASCOIGNE ET AL.	
	Examiner	Art Unit	
	Carolyn Raden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13-18 is/are rejected.
- 7) ☒ Claim(s) 8, 12 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> | 20) <input type="checkbox"/> Other: |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kielsmeier (3,961,077) in view of Miller (5,709,900).

Kielsmeier discloses making pasta filata cheese by the stored curd process. In the last line of the abstract, the concept of blending curd from a plurality of separate batches is disclosed. The processing of the cheese in a cheese cooker is shown in the flow chart on the front page of the patent. The fat is lowered in the cheese by the use of a combination of whole milk and skim milk ingredients during curd formation. Claim 1 appears to from Kielsmeier in the indication that the cheese is packaged but it is well known in the art to package cheese products and Miller is relied upon to support this assertion. It would have been obvious to one of ordinary skill in the art to package the cheese of Kielsmeier in order to extend the shelf life of the food product. Given the reference to packaged cheese in Miller, one of ordinary skill in the art would have been able to package the product of Kielsmeier.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farkye (5,766,657) in view of Miller (5,70,900).

Farkye discloses combining more than one cheese curd together to make a cheese with a particular melt value. At example 2, lines 62-67, two cheese curds are mixed, placed in a cheese cooker and heated with steam to prepare a blended cheese

product. The claims appear to differ from the reference in the suggestion that the cheese are packaged. Miller teaches packaging cheeses and shows that it is well known in the art to package cheese products. It would have been obvious to one of ordinary skill in the art to package the cheese of Farkye in order to extend the shelf life of the food product. Given the reference to packaged cheese in Miller, one of ordinary skill in the art would have been able to package the product of the primary reference.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 10 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Callahan (5,104,675).

Callahan discloses a processed cheese made from a blend of mozzarella and cheddar cheese (column 2, lines 56-68). The product is described as having a minimum fat content of 35% and a maximum moisture content of 48%. The pH and salt content of the product are described at column 3, lines 25-34 to be within that set forth in the composition blend of claims 10 and 15. The ingredients are blended, then subjected to steam injection cooking and shear mixing (see column 3, lines 35-44). The product is formed, wrapped and cooled in a single cooling station that contains cooling wheels.

Claims 2, 7, 9, 13, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callahan (5,104,675).

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Callahan discloses a processed cheese made from a blend of mozzarella and cheddar cheese (column 2, lines 56-68). The product is described as having a minimum fat content of 35% and a maximum moisture content of 48%. The pH and salt content of the product are described at column 3, lines 25-34 to be within that set forth in the composition blend of claims 10 and 15. The ingredients are blended, then subjected to steam injection cooking and shear mixing (see column 3, lines 35-44). The product is formed, wrapped and cooled in a single cooling station that contains cooling wheels.

The claims appear to differ from the reference in the suggestion that the product is blast cooled but given the flash or rapid cooling expected for a cheese slice on a cheese wrapping wheel, no unobvious or unexpected results are seen from this particular feature. It is appreciated that the mixing speed or the use of a closed auger flighting is not sufficient to obtain a well blended product is seen to be within the determination of one of ordinary skill in the art who has the mixing guidance of Callahan before him. It is appreciated that the lower salt content of claim 17 is not specifically set forth in the reference. But to reduce the salt content of the cheese in order to prepare a product lower in sodium would have been obvious to one of ordinary skill in the art that desires to prepare a healthful low sodium cheese.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Callahan as applied to claims 1-5, 7, 9, 10 and 13-18 are above, and further in view of Kielsmeier.

The claims appear to differ from the reference in the indication that a thermophilic culture is added to the product. Kielsmeier teaches that thermophilic cultures are

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known in the manufacture of pasta filata cheese (see abstract). It would have been obvious to one of ordinary skill in the art to use the culture of Kielsmeier in the cheese of Callahan in order to provide a cheese with the typical flavor of pasta filata cheese.

Claims 8 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CAROLYN PADEN 5-17-01
PRIMARY EXAMINER